

Anne Hassell, Widow and Administratrix of Roger West, Esq; who was Administrator of Eleanor his Wife, one of the Daughters of Sir John Knatchbull, Bar. deceased, and Sir Charles Lodowick Corterell, Knt. } APPELLANT

Sir Thomas Knatchbull, Bar. Brother of Sir John Knatchbull, - - - - - } RESPONDENT

The Respondent's CASE.

1659. **S**IR John Knatchbull having Intermarry'd with the Daughter of the Lady Monins; by his Marriage-Settlement, (whereby his Estate was settled upon his first and every other Son in Taile Male) did, among other things, create a term of One Thousand Years, for raising Eight Thousand Pounds for Daughters Portions, in case of Three or more Daughters, and no Issue Male.

1689. Sir John had Issue a Son, and Three Daughters; and the Son arriving at the Age of One and Twenty Years, in the Year 1689. and being Tenant in Taile, in Remainder, joined with Sir John in a Recovery to destroy the Term; and soon after the Son died without Issue.

1689, and 9690. Sir John borrow'd of my Lady Monins 1400 l. and gave his Notes for the Repayment thereof, with Interest at 5 l. per Cent. And having afterwards entred into a Treaty, in the Year 1691. to Marry his Eldest Daughter Elizabeth to Mr. Lely, offered to advance the Summ of 2500 l. for her Portion: And my Lady Monins likewise offer'd to add the Summ of 500 l. out of the 1400 l. that the Fortune might be compleat 3000 l.

Which Treaty of Marriage took effect, with this Variation only, That instead of the 3000 l. so agreed to be paid as her Portion, Sir John assign'd to Mr. Lely certain Marsh-Lands in Kent, to the Value of 160 l. per Annum; Sir John always looking upon himself to be indispensably oblig'd in Conscience to see the Provisions intended by the Marriage-Settlement made good to his Daughters, though the Legal Interest was destroy'd, as aforesaid.

And further, As to the 900 l. Residue of the 1400 l. remaining in Sir John's Hands, my Lady Monins came to this Agreement with him, That the Money should sink in his Hands, provided he would add the Summ of 500 l. a-piece to the Fortunes of the two Unmarry'd Daughters, whereby the said 900 l. should be Discharged. Which Bounty of the Lady Monins, Sir John did very gratefully acknowledge in his Life-time, and did at his Death leave a Note in his Study to testify his Thanks for the same, and also to prevent all Mistakes that might arise in his Family touching his Notes for the 1400 l. which were given at the first Borrowing thereof, and which lay out in my Lady Monins's Hands against him.

Oct. 1696. Sir John Knatchbull having afterwards contracted several great Debts, amounting in all to the Summ of 18000 l. made his Will, and thereby appointed 3300 l. a-piece to Eleanor and Jane, his two Unmarry'd Daughters, whereby 500 l. a-piece was added to their Portions, and declar'd it to be in lieu of the Provision made by his Marriage-Settlement; and dying without Issue Male, Devise'd his Lands to this Respondent, his Brother, subject to the Payment of his Debts and Legacies, which were 25000 l.

1698. The said Eleanor, after Sir John's Death, intermarry'd with the said Roger West, and died without Issue: And the said Fortune of 3300 l. was paid by this Respondent to the said Roger West, her Administrator.

Notwithstanding this, Mr. West Exhibited his Bill in Chancery against the Respondent, for the Summ of 500 l. as still due on my Lady Monins's Notes, pretending the same was assigned to him by the Lady Monins, and not included in the Fortune of 3300 l. which Sir John, by his Will, had appointed to be paid to his Daughters. To which the said Respondent, by Answer, insisted, That the said 500 l. was made good according to the Lady Monins's Agreement, and was comprehended in the said Legacy which had been already paid to him in his Wife's Fortune.

Mr. West dying, and the Cause being revived by the Appellant Hassell, it was Heard before the Right Honourable the Lord Keeper; And the Point in Question was, Whether the 500 l. was Answered and Included in the 3300 Pounds? Which being fully made out in the Cause, His Lordship was pleas'd to Dismiss the Appellant's Bill: And this Respondent humbly hopes this most Honourable House will be pleas'd to Confirm the said Decree of Dismission, by Dismissing of the said Petition and Appeal, with Costs. For that,

It has been always taken to be a Rule of Natural Equity, That whenever a Legacy of greater Value is given to a Creditor, it shall be presumed to comprehend the Debt due to that Person: And the rather in this Case; Because it appears by Proofs in the Cause, and a solemn Memorandum under Sir John Knatchbull's Hand, That he had settled the Matter with my Lady Monins, and had agreed to add the 500 l. a-piece to the respective Portions of his Unmarried Daughters. And in this Case it would sound the more harsh to presume the contrary, inasmuch as it would tend to Encrease the Younger Daughters Fortunes so much out of Proportion to their Elder Sister, and to Lessen the Overplus to this Respondent, that was to carry the Honour and Name of the Family. Which it's humbly Hoped Your LORDSHIPS will not do, in a Case where it plainly appears in Proof, That Sir John did on all Occasions profess, that he never intended to his Daughters, out of his own Estate, any more than the Summ of 2666 l. 13 s. 4 d. the Portion appointed by his Marriage-Settlement: Which, together with this 500 l. from my Lady Monins, and the Summ of 133 l. 6 s. 8 d. particularly proved to be designed for their present Subsistence till the Time appointed for the Payment of their Fortunes, exactly amount to the Summ of 3300 l. the Portion limited by his Will: And though the words of the Will have declared it to be in lieu of the Marriage-Settlement: Yet it cannot be restrained to that only, because it is fully proved that those words were inserted to Answer the peculiar Scruple of one Mr. Hoskins, at the Drawing of the said Will, left the Demand on the Settlement should be set up, notwithstanding the Legacy.

Nor is it to be presumed the Lady Monins should understand that this Debt was still subsisting upon the old Notes, when she required his Bond for 600 l. in July 1695. afterwards Lent him, and for which she has received a constant Interest, without any Demand upon the Notes, as appeareth by the Proofs in the Cause: Nor did the said West, or his Wife, ever advance this Pretension in the Suit commenc'd and prosecuted against them by this Respondent for Proving Sir John Knatchbull's Will, though they therein thought fit to insist on the Legacy, and even on the Provision by the Marriage-Settlement over-and-above; nor did he afterwards, when Bond was given by this Respondent for the Fortune, ever pretend to demand it.

WHEREFORE, For these and such other Reasons as do appear in the Cause, this Respondent doth humbly Hope Your LORDSHIPS, in Your great Justice, will Dismiss the said Appeal, with Costs, and Affirm the said Decree.

JEFFERAY GILBERT.